DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

MOHLER *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 454.]

1. Criminal Law (§ 663*)—Trial Court Should Compel Attorney to Permit Opposing Counsel to Have Access to Transcript of Evidence of Previous Trial.—Transcripts of the evidence given on a previous trial or hearing, when brought into court for use, cease to be strictly private property, and opposing attorneys should then have equal access thereto, and, if not accorded as a matter of courtesy, the trial court, when the question is first raised during the trial, should exercise all its powers to that end.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 40.]

2. Criminal Law (§§ 627½*)—Party Having Transcript of Evidence of Prior Trial Can Only Require Payment for Copy by Opposing Counsel.—The only condition which an attorney possessing a transcript of the evidence on a prior trial or hearing has any right to impose in advance of the trial is payment by the opposing attorney demanding the transcript of the amount necessary to pay for a copy thereof.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 58.]

3. Criminal Law (§§ 1169 (5), 1170 (3)*)—Error in Admitting or Excluding Evidence May Usually Be Cured by Contrary Ruling before Submission.—While it is important that all legal testimony should be promptly admitted and all that is illegal promptly excluded, it is usually sufficient that errors in this respect be corrected as promptly as possible and before the case is submitted to the jury.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 345.]

4. Criminal Law (§ 1169 (2)*)—Testimony that Witness Had Heard Insignia Discussed Not Harmful, When there Was Otherwise Sufficient Identification.—Where the military insignia on deceased's clothing were otherwise sufficiently identified, it was not harmful error to permit a witness to testify that he had heard the different badges discussed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

5. Criminal Law (§ 488*)—Qualified Witness, Who Tested Stains

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by Serum Which He First Tested, Properly Permitted to Testify They Were Blood Stains.—Where the Richmond city coroner, who was fully qualified as an expert in such chemical analyses, tested stains with a serum purchased from recognized chemists, after first testing the serum, his testimony that the stains were blood stains was properly admitted.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 780.]

6. Criminal Law (§§ 318, 351 (8)*)—Evidence Held Not to Warrant Inference that Accused Was Trying to Secure False Testimony, but Admissible if It Did.—Where a witness had been sent for by accused while in jail, her testimony that she thought he wanted her to testify about blood stains, but that she could not tell what was not so, did not warrant the inference that defendant was endeavoring to secure false testimony; but, if it did, the prosecution was entitled to introduce it in a case dependent entirely on circumstantial evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 818.]

7. Criminal Law (§§ 450, 1169 (9)*)—Testimony of Witness as to his Own Remark Expressing Opinion as to Guilt Held Inadmissible and Prejudicial.—Where the prosecution relied on circumstantial evidence on a trial for murder, testimony of a witness that he was shown something that must have been blood, and thereupon said, "This is enough for me," was inadmissible and prejudicial, as it amounted to the expression of his opinion that defendant was guilty.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 793.]

8. Homicide (§ 338 (4)*)—Admission of Evidence Harmless When Struck Out and Jury Told to Disregard.—The admission of testimony that deceased told the witness, on the day he disappeared, that he was going to defendant's home that night, was harmless, when the court struck it out and told the jury to disregard it, especially where the inference that deceased expected to meet defendant that night was otherwise proved and practically admitted by defendant.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 345.]

9. Homicide (§ 174 (8)*)—Conversations with Defendant Relative to Deceased's Disappearance Held Admissible.—Conversations between accused and a witness with reference to the disappearance of deceased were admissible on a trial for murder.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 60.]

10. Criminal Law (§§ 419, 420 (10), 1169 (1)*)—Testimony that Third Person Said Defendant Knew about Crime Held Hearsay and Prejudicial.—Where a witness testified that accused gave her a flashlight looking like one she had previously loaned to deceased, her further testimony that, in connection therewith, her brother and brother-in-law said they had told her all the time that defendant

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

"knew about this," was hearsay and prejudicial, where the evidence was circumstantial.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 49.]

11. Criminal Law (§§ 450, 1169 (9)*)—Admission of Opinions as to Guilt Improper and Not Excusable because Court Had Told Jury They Could Not Be Considered.—That a trial was unnecessarily prolonged, and that the judge often told the jury he thought they fully understood that they could not consider opinions of others as to defendant's guilt, does not relieve the appellate court of the obligation to require the rules of law to be maintained, and mere opinions of nonexperts upon the main fact to be decided by the jury should have been excluded, and failure to do so was prejudicial error.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 792.]

12. Criminal Law (§ 1170 (2)*)—Exclusion of Impeaching Question Asked Witness Not Available Error When Matter Fully Developed Subsequently.—The refusal to require a witness to answer a question, asked for the purpose of discrediting her, as to whether she had tried to get a forged prescription for morphine filled, was not ground for reversal, where the whole matter was fully developed later in the trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

13. Criminal Law (§ 1169 (2)*)—Admission of Evidence Harmless When Same Testimony Adduced on Cross-Examination.—The admission of testimony as to conversations, agreements, and engagements with deceased in the absence of accused, was harmless, where the same testimony was adduced by accused's counsel on cross-examination.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

14. Criminal Law (§ 451 (2)*)—Testimony that Witness Thought Object Which He Saw Covered Up Was a Man's Body Admissible under Collective Facts Rule.—Where a witness testifying that he saw something which looked like a man's body covered by a coat or sacks or something, stated all the facts which he observed, it was not error, under the collective facts rule, to permit him to testify, in response to a juror's question whether it might have been a pile of rags or something, that he thought it was a man's body.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 792.]

15. Criminal Law (§ 1169 (5)*)—Opinion of Witness as to Guilt Harmless When Promptly Excluded.—Testimony that, from defendant's looks, the witness considered him the guilty man, was harmless, when promptly excluded from the jury's consideration.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

16. Witnesses (§ 240 (4)*)—Improper for Commonwealth's Counsel to Ask whether Defendant's Conduct Did Not Convince Witness and Himself of Defendant's Guilt.—Where a witness was apparently not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

as emphatic in his imputations against accused as was expected, it was improper for the commonwealth's attorney to ask him whether it was not the fact that defendant's conduct and actions "told you and me to go on ahead," thus conveying his own more positive impression of defendant's guilt and using language unnecessarily rude.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 70.]

17. Criminal Law (§ 450*)—Statements of Counsel Testified to by Himself Held Inadmissible as Opinions of Guilt.—The testimony of the attorney for the commonwealth that in investigating the case he said to another, "I have got all I want," and, "I am done," held inadmissible as amounting to expressions of his opinion that defendant was guilty.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 792.]

18. Witnesses (§ 224*)—Testimony of Commonwealth's Attorney Subject to Same Limitations as That of Other Witnesses.—Where an attorney, and particularly the prosecuting attorney, deems it his duty to testify, he is, while a witness, subject to all the limitations imposed on other witnesses.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 907.]

19. Criminal Law (§ 277 (2)*)—In Court's Discretion to Permit Introduction of Exhibits during Defendant's Cross-Examination.—It was not error for the court in its discretion to permit accused to be cross-examined concerning spots and stains thereon over the objection to any new exhibits at that stage of the trial.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 956.]

20. Criminal Law (§ 1153 (4)*)—Discretion as to Time for Admitting Exhibits Not Interfered with unless Abused.—The exercise of the trial court's discretion as to permitting the introduction of exhibits during defendant's cross-examination is not ground for reversal unless such discretion is abused.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 596.]

21. Criminal Law (§ 706*)—Witnesses (§ 277 (2)*)—Cross-Examination of Defendant Held Improper as Amounting to Argument before Testimony Was Presented.—A question, asked defendant on cross-examination, whether he meant to tell the jury that he was not mad at a woman who had charged him with murder and gone on the stand and on different occasions "made statements which if believed will put you where the lights don't burn," was improper, as the prosecuting attorney should respect the presumption of innocence and not argue the case until the evidence has been fully presented.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 70.]

22. Criminal Law (§ 364 (2)*)—Statements by Deceased that He Was Going to Defendant's Place Held Admissible as Res Gestæ.—Statements by deceased to witnesses within a mile of the scene of the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

murder, and while deceased was going in that direction and on the last occasion on which any witness positively identified him as having been seen alive, that he was going to defendant's place and had been invited up there, was admissible as part of the res gestæ, where the fact that deceased intended to meet accused and had expressed his intention of so doing and promptly proceeded to execute such intention was otherwise indicated.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 922.]

23. Witnesses (§§ 337 (1), 343*)—Defendant May Be Impeached by Proof of Reputation for Truth and Veracity at Time of Trial.—When defendant testifies in his own behalf, his credibility may be attacked like that of any other witness, and the question is his reputation for truth and veracity at the time at which he testifies, and not prior to the commission of the crime.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 965.]

24. Homicide (§ 163 (1)*)—Reputation as Peaceable and Law-Abiding Man Limited to Reputation at Time of Crime.—On a trial for murder, one who proves his reputation as a peaceful and law-abiding man up to the time of the commission of the offense is entitled to have it considered as it existed at that time, and not as it may have been subsequently affected by the accusation of the crime.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 40.]

25. Witnesses (§ 337 (4)*)—Testimony that Witness Had Never Heard Another's Reputation for Truth Questioned Properly Admitted.—Where a witness, introduced by way of defense to repel an attack on the reputation of another for truth and veracity, testified that he had known the other witness well for many years and had never heard his reputation for truth and veracity discussed and would believe him on oath, a motion to exclude was properly overruled, though on cross-examination, in answer to a question whether he knew the other's reputation for truth and veracity, he answered, "No."

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 970.]

Error to Circuit Court, Rockbridge County.

Addison Mohler was convicted of murder in the second degree, and he brings error. Reversed and remanded.

Hugh A. White and *Chas. S. Glasgow,* both of Lexington, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

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